



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: October 7, 2006 REPORT NO: 06-143

ATTENTION: Natural Resources and Culture Committee
Docket of Oct. 11, 2006

SUBJECT: City of San Diego Storm Water Permit

REFERENCE: Report to City Council #05-194, presented at the September 21,
2005 Natural Resources and Culture Committee Meeting

REQUESTED ACTION: No action is requested; this is an informational item only.

SUMMARY:

Background

California implements a number of storm water-related provisions of the Federal Water Pollution Control Act (also known as the "Clean Water Act") through the State's Porter-Cologne Water Quality Act (Porter-Cologne). Porter-Cologne established the State Water Resources Control Board ("State Board") and nine Regional Water Quality Control Boards ("Regional Boards"). The Regional Water Quality Control Boards are charged with preparing "Basin Plans" for areas under their jurisdiction. Basin Plans establish "Beneficial Uses" for the "receiving water bodies" identified in the Basin Plan. The Basin Plans also establish quantitative and qualitative objectives ("Water Quality Objectives" or "WQOs") for a number of different pollutants, compliance with which is intended to facilitate enjoyment of the corresponding beneficial uses.

The "National Pollutant Discharge Elimination System" ("NPDES") component of the Clean Water Act originally focused on sewage discharges but was interpreted to also apply to storm water discharges in 1989. In California, NPDES storm water requirements are implemented via issuance of storm water permits to dischargers by the Regional Board with jurisdiction. In San Diego, the City of San Diego is one of 21 "co-permittees" subject to a single permit regulating urban runoff discharges into the storm drain system ("MS4"). The current permit was issued in 2001 with a term of five years, and is scheduled to be replaced by a new, revised permit in December, 2006.

Discussion

Regional Board staff originally issued the proposed storm water permit on March 10, 2006. City staff, along with other co-permittees, opposed certain provisions of the proposal – not on the basis of the intent of the regulations, but rather on the basis of how Regional Board staff proposed for the permit intent to be implemented; the City's comments focused on achieving the intent of the Permit's regulations in the most efficient manner possible. The City's comments, dated June 7, 2006, are attached as Attachment A. Subsequently, at the direction of the Regional Board members, Regional Board staff made significant revisions to the permit to respond to the comments received from the co-permittees and reissued the proposed permit on August 30, 2006 (Attachment B). Regional Board staff response to all comments received on the March 10, 2006 draft can be found at:

<http://www.waterboards.ca.gov/sandiego/programs/stormwater/sd%20permit/Reissuance/Revision%201/Final%20Responses%20to%20Comments.pdf>

Similar to the existing permit, the proposed permit regulates the following storm water quality issues:

1. Preparation and update of a Jurisdictional Urban Runoff Management Program, Watershed Urban Runoff Management Programs, and [new] a Regional Urban Runoff Management Program.
2. Development Planning – requires the City to address storm water quality regulations in its review of development projects.
3. Construction – requires the City to address storm water quality regulations on public and private construction sites.
4. Existing Development – requires the City to inspect, require BMPs of, and, in the case of public facilities (e.g., operations yards, treatment plants, parklands, etc.), implement BMPs at developed sites. In particular, this section requires the inspection of commercial and industrial facilities and requires sweeping of streets and cleaning of storm drains at regular intervals.
5. Illicit Discharge and Elimination – requires the City to sample and analyze runoff and to investigate the source of pollution in samples containing high concentrations of pollutants.
6. Education and Public Participation – requires the City to educate the public on storm water quality, including individual behaviors that can improve storm water quality. Requires specific outreach to various segments of the community including businesses, residents, and children and the public within specific watersheds.
7. Reporting – requires the city to report on a number of issues from a jurisdictional, watershed, and regional perspective. Reports address fiscal analyses, program assessments and program activities, including receiving water monitoring.

Significant issues raised by the city and co-permittees in response to the March 10, 2006 permit are listed below along with an analysis of how Regional Board staff modified the permit in August, 2006 proposed permit was modified in response to the comments:

1. The new permit requires the City to develop "Hydromodification Plans" ("HMPs") in certain watersheds. Hydromodification plans would be used to update development regulations to ensure that new development does not contribute to downstream erosion. Developments subject to hydromodification regulations will be required to retain runoff on site, releasing it at slower, less-erodive rates. City staff commented that the March 10, 2006 permit prescribed a potentially inappropriate methodology for developing the HMPs and did not allow sufficient time to research and adopt HMPs. Regional Board staff revised the permit in August to clarify that different methodologies could be used and allow two years for completion of the HMPs.
2. The new permit requires the City to track all and inspect a portion of all treatment control BMPs installed by public and private development projects. City staff commented that the March 10, 2006 permit was less effective by allowing inspections only during the dry season, that the number of inspections required was too high given that a "spot inspection" program could be more efficient, and that a cap should be added to the number of inspections required annually. Regional Board staff revised the permit in August to allow inspection of low and medium priority projects during the rainy season and to add a cap on the number of inspections required annually.
3. The new permit increases the number of construction site inspections required. City staff commented that the March 10, 2006 permit required too frequent inspections for inactive construction sites (up to every other week, for example, for sites over 50 acres). Regional Board staff did not revise the permit in August in response to this comment.
4. The new permit increases the frequency at which storm drains must be inspected and cleaned. City staff commented that the March 10, 2006 was too restrictive by requiring inspection of all catch basins, storm drain inlets, and open channels during the dry season. Staff recommended that storm drain facilities be prioritized and inspected/cleaned on the basis of their priority, ensuring that all high priority areas are cleaned at least once annually and that cleaning be allowed to occur at all times of the year. Regional Board staff revised the permit in August to require that all high priority areas be cleaned during the dry season and to allow all other areas to be cleaned at any time of year. The revised permit allows the City to define low priority areas and clean these areas every other year.
5. The existing permit defines municipal streets as part of the storm drain system, thereby requiring street sweeping on all roads at least one time per year. The new permit established specific, increased street sweeping frequencies (up to twice per month for high priority areas). City staff commented that the March 10, 2006 permit should not require sweeping streets which have no curb and gutter because debris is not collected at the curb. Regional Board staff revised the permit in

August to eliminate the minimum street sweeping frequency for unimproved streets.

6. The existing permit does not specify a minimum number of “watershed activities” that the City is expected to undertake annually. The March 10, 2006 permit required up to six new projects in each of the City’s six watersheds per year. City staff commented that the new permit provisions were confusing and did not provide for consolidating projects. Regional Board staff revised the permit in August to allow more flexibility in implementation of watershed activities.
7. The existing permit requires inspection of commercial and industrial facilities. The March 10, 2006 permit would have doubled the required number of these inspections by requiring 40% of businesses to be inspected annually. City staff commented that such an increase should be phased in over three years (the original 40% proposal was based on a misunderstanding of current efforts) and that the permit should allow for third party inspections. Regional Board staff revised the permit in August to require 25% of businesses be inspected annually within two years and to allow up to 30% of inspections to be conducted by a third party.
8. The current permit requires “timely” follow-up investigations when high levels of pollutants are found during dry weather monitoring”. The March 10, 2006 proposed to replace “timely” with a requirement that follow-up investigations occur within 48 hours of receiving lab results which indicate that high levels of pollutants are present. City staff commented that it would be impracticable to comply with this requirement. Regional Board staff revised the permit in August to replace “48 hours” with “two business days” and allow the City to justify, in some situations, why a follow-up investigation is not warranted.

Significant issues raised by other parties in response to the March 10, 2006 permit include:

1. Building-related industries commented on the legitimacy, practicality, timing, and methodology for developing the HMPs, the requirement for advanced storm water treatment at certain construction sites, and the frequency of construction inspections.
2. Environmental groups commented that the permit should include numerical limits on pollutants in storm water discharges and “Low Impact Development” requirements should be increased in the City’s development regulations.

FISCAL CONSIDERATIONS:

Staff has previously estimated the new cost of complying with the March 10, 2006 permit to be \$30 million (in addition to the FY '07 budget allocations for the Streets and Storm

Water divisions). A cost estimate for complying with the August 30, 2006 permit has not yet been compiled, but is expected to be somewhat less than \$30 million.

Section 6 of Article XIII B of the California Constitution requires the state to reimburse local agencies for the costs of programs that "any state agency" mandates for a "higher level of service." In 2004, the voters approved a constitutional amendment that provides that reimbursements to local agencies for state mandated programs must be appropriated by the Legislature into the state budget or the mandated program will be suspended for the fiscal year in which no appropriation was made. (Cal. Const. art. XIII B § 6(b), Proposition 1A.)

Courts have stated that the purpose of Proposition 1A is to prevent "the state [from forcing] extra programs on local governments in a manner that negates the ability of a local agency to carefully budget for expenditures, particularly where the cost of compliance with a program restricts local spending in other areas." The City Attorney has determined that the proposed "hydromodification program" adds additional levels of service - above federal permit requirements - to the existing permit and, therefore, must be funded by the State. The City Attorney is evaluating whether other provisions in the permit are also unfunded mandates.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:


None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:


None by City staff; the Regional Water Quality Control Board has held publicly-noticed hearings and workshops on the permit.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

In addition to City service levels (increased inspections and facility maintenance), permit terms will affect developers and CIP projects (construction of additional BMPs), property owners, (construction and maintenance of additional BMPs), and commercial/industrial businesses.



Scott Tulloch
Metropolitan Wastewater Department



R.F. Haas
Deputy Chief of Public Works

CZ:cZ

Attachments:

- A. City's June 7, 2006 comments on the March 10, 2006 draft Storm Water Permit
- B. August 30, 2006 Storm Water Permit as proposed by the Regional Board